

46 Am. Jur. 2d Judges § 158

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

c. Prior Participation in or Connection with Case as Attorney as Grounds for Disqualification

§ 158. Judge's former role as attorney general as ground for disqualification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  47(1), 47(2)

A.L.R. Library

[Prior Representation or Activity as Prosecuting Attorney as Disqualifying Judge from Sitting or Acting in Criminal Case, 85 A.L.R.5th 471](#)

A judge hearing an appeal is not required to disqualify him- or herself because the judge had, as attorney general, rendered an opinion concerning one of the points involved in the litigation.¹ Generally, a judge who has been employed in the office of the attorney general is not disqualified to sit on a case involving a party who has been up before the attorney general.² Nor is a judge disqualified where the case before the judge, in which the state is a party, was under study while he or she was a deputy attorney general but was not assigned to him or her then or otherwise brought to his or her attention.³

A number of courts have taken the position that a judge who had been an attorney general at the time that a defendant was prosecuted for an offense is disqualified, in general, from sitting as a judge in a further proceeding involving the same defendant in the same offense, often on the ground that a statutory provision rendered the judge disqualified, despite the fact that the judge was not at all involved in the actual prosecution.⁴

Reminder:

The Code of Judicial Conduct provides that the judge should disqualify him- or herself in any proceeding in which the judge served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;⁵ and such rules are embodied in the federal statute regarding the disqualification of judges.⁶

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Footnotes

- 1 Dade County Bd. of Public Instruction v. Michigan Mut. Liability Co., 169 So. 2d 483 (Fla. 1964).
- 2 Langdeau v. Dick, 356 S.W.2d 945 (Tex. Civ. App. Austin 1962), writ refused n.r.e., (Nov. 21, 1962).
- 3 State by Kobayashi v. Midkiff, 49 Haw. 252, 413 P.2d 249 (1966).
- 4 State ex rel. Corbin v. Superior Court of State of Ariz., In and For Maricopa County, 155 Ariz. 560, 748 P.2d 1184 (1987); King v. State, 246 Ga. 386, 271 S.E.2d 630, 16 A.L.R.4th 545 (1980).
- 5 § 154.
- 6 § 153.

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